TESTIMONY BEFORE
SUBCOMMITTEE ON ENERGY AND RESOURCES
HOUSE COMMITTEE ON GOVERNMENT REFORM

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STATEMENT OF WILLIAM L. WEHRUM
ACTING ASSISTANT ADMINISTRATOR, AIR AND RADIATION
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. INTRODUCTION

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to deliver this statement on behalf of three Federal agencies--the Department of State, the Department of Agriculture, and the Environmental Protection Agency. We recognize that methyl bromide, and the implementation of the Clean Air Act (CAA) and Montreal Protocol, are issues of great importance to you and many of your constituents. I would like to first provide a brief overview of our ongoing efforts to protect the ozone layer and then discuss the critical use exemption (CUE) process for methyl bromide (MeBr).

II. PROTECTING PUBLIC HEALTH, THE ENVIRONMENT, AND U.S. BUSINESS INTERESTS

Since the Montreal Protocol's inception in 1987, the United States has exerted strong global leadership in the transition away from ozone-depleting substances and toward the development of new technologies that are safe for the ozone layer. The U.S. continues to meet all of its obligations under the Montreal Protocol. Further, the U.S. continues to invest heavily in the development and deployment of alternatives.

A major goal of both the Montreal Protocol and the CAA is to protect the public from skin cancer caused by excess harmful ultraviolet radiation reaching the Earth's surface through a depleted ozone layer. EPA works to provide the public with information on how to reduce overexposure to UV radiation and control the chemicals that damage the stratospheric ozone layer. EPA's public information efforts were recognized by the Cancer Research and Prevention Foundation's Congressional Families Action for Cancer Awareness, which cited our SunWise School Program for excellence in 2003. An EPA study estimated that full implementation of the Montreal Protocol would prevent 6.3 million cases of skin cancer from 1990 to 2165.

The 2002 Scientific Assessment of Ozone Depletion, a comprehensive overview of the state of the ozone layer involving the work of hundreds of atmospheric scientists, life scientists, and researchers worldwide, with significant U.S. participation, found that the ozone layer continues to be susceptible to damage. Although we are currently on track for full recovery of the ozone layer if we stay the course. However, the stratospheric concentration of ozone-depleting chlorine is presently at or near its peak and

the concentration of bromine in the stratosphere continues to increase. As a result, seasonal ozone depletion in the Antarctic continues and some of the largest and deepest holes on record have occurred in the first years of this decade.

As a result of the Montreal Protocol and its implementation pursuant to Title VI of the Clean Air Act, many businesses invested heavily in alternatives that do not damage the ozone layer. The substantial financial commitment by U.S. companies has generated an estimated $10 billion dollar business in trade with ozone-safe American products and technologies that could be at risk if the U.S. were to take action inconsistent with its commitments under the Montreal Protocol. For all of these reasons, this Administration remains committed to finishing the job of restoring and protecting the ozone layer, a job first undertaken by President Ronald Reagan.

III. THE CRITICAL USE EXEMPTION PROCESS: BACKGROUND

That brings me to the topic of today's hearing, the critical use exemption (CUE) process for methyl bromide (MeBr). The title of today's hearing is the right place to start: it asks whether U.S. interests are being served by the CUE process. I particularly note the Subcommittee's use of the plural for the word interests, which I applaud because we agree that there are really two important interests here for the U.S.: protecting public health and assuring that our growers' critical needs and the needs of the food processing industry for MeBr are met as they make the transition to alternatives. I believe that both of these U.S. interests are being served by the CUE process, and I would like to spend the bulk of my testimony explaining why. But I need to first step back and explain the Montreal Protocol framework in which the CUE process fits.

Title VI of the 1990 Clean Air Act Amendments required EPA to phase-out, within seven years, the production and import of any newly-identified substance with a significant potential to damage the ozone layer. In 1991, EPA received a petition to list methyl bromide and in response, the Agency promulgated a rule, in conformance with the CAA requirement, that established a U.S. phase-out date of 2001 for MeBr without any exemptions. In 1997, the U.S. and the Montreal Protocol Parties agreed a full phase-out of MeBr in 2005, with interim reductions in 1999, 2001, and 2003, and with newly established exemptions. In 1998, Congress amended the CAA to conform the U.S. phase-out schedule to that of other developed country Parties to the Montreal Protocol, resulting in the phase-out schedule we have today.

There are three major exemptions to the MeBr phaseout: 1) quarantine and preshipment; 2) emergencies; and 3) critical uses. While I will only address critical uses of MeBr in today's testimony, I would briefly note that the quarantine and emergency exemptions allowed by the Montreal Protocol serve important U.S. interests with respect to trade (in controlling harmful and invasive pests) and addressing emergency situations. The critical use exemption (CUE) allows any developed country that is a Party to the Protocol to seek an exemption from the MeBr phase-out if it determines that the absence of MeBr would cause a significant market disruption and that there are no technically and economically feasible alternatives for the use in the context of the application. The

Parties may then approve the critical use if the Party continues to make efforts to find alternatives, strives to minimize use and emissions, and MeBr is not available in sufficient quantity and quality from existing stocks.

Many countries have sought CUEs for MeBr. The U.S. is one of 17 countries that have submitted annual critical use nominations (CUNs). Some national requests have been very small, covering only one use, and some have been large, covering 10 or more uses. The amount of MeBr nominated by the U.S. was between about 9,900 and 6,400 metric tonnes for 2005, 2006, 2007 and 2008—this translates to between 39 percent to 25 percent, respectively, of our 1991 baseline consumption level for MeBr.

The U.S. Government has developed each annual CUN through a rigorous technical process involving the careful efforts of many technical experts. For the most recent 2008 nomination, for example, EPA's Office of Pesticide Programs, with collaboration from the USDA, worked intensively with growers and food processors to fully understand genuine critical needs in various states and agricultural sectors. This allowed expert scientific and economic staff to develop technically supported estimates for U.S. critical needs for 2008 that were then shared with policymakers through an interagency process involving the State Department, USDA, EPA, USTR, OMB and the Council on Environmental Quality. Each year's technical estimate has been lower than the previous year's for various reasons including that some sectors have switched to alternatives, some sectors have dropped out altogether if they do not need the exemption, and because better information has been obtained for more accurate estimates of MeBr critical needs.

IV. THE CUE PROCESS: ARE U.S. INTERESTS BEING SERVED?

A key measurement to determine if U.S. interests are being served is whether the U.S., through implementation of the Treaty and the exemption process, is achieving an end result that serves the critical needs of growers and other users. In this regard, it is notable that the Parties have agreed to the vast majority of the U.S. Critical Use Nominmation (CUN) requests. The Parties approved over 90 percent of the CUN for 2005, 2006 and 2007 amounting to 37 to 26.4 percent of the U.S. 1991 baseline consumption.

A second important metric in determining whether the CUE process serves U.S. interests is understanding whether our technical work – at the level of the technical review processes internationally – is getting a fair hearing. We recognize that the CUE process, involving literally hundreds of individual crops and users in 17 countries, presents an unusually difficult challenge for the Methyl Bromide Technical Options Committee (MBTOC), which is the expert technical panel that evaluates applications on behalf of the Parties. This body is made up of international experts, including a significant number of U.S. experts. MBTOC is not a decision-making body. It is solely responsible for assessing national CUNs and making technically-based recommendations to the Parties.

In prior years, due to the newness of the process and the formidable challenge posed by the sheer volume of material being reviewed by this small group, the U.S. faced situations in which large portions of the U.S. nomination were listed by MBTOC as 'unable to assess,' leaving the Parties without any guidance from a technical perspective. With strong support from the U.S., the Parties took steps in 2004 to address this challenge by adopting Decision XVI/4 to provide clear guidance to the MBTOC in their review of CUE nominations. The U.S. welcomes these improvements and believes these new guidelines will ensure that the MBTOC reviews fully consider the relevant technical and economic criteria contained in Montreal Protocol decisions and transparently describe the basis for their evaluations.

Finally, we also know that the Montreal Protocol and the CUE process had the effect of increasing choices in the private marketplace. This emulates what we saw in earlier transitions. One reason we have seen the U.S. CUNs decline over time is due to the penetration of MeBr alternatives. There are some new alternatives to MeBr that are efficacious and there is evidence from recent multi-year studies that enhanced application techniques and other factors can make certain chemicals suitable MeBr replacements as well.

V. ALTERNATIVES TO METHYL BROMIDE

The U.S. government commitment to research, approval, and deployment of alternatives remains high. From 1993 through 2004, the USDA Agricultural Research Service has spent approximately $200 million in an aggressive research program to find alternatives to MeBr. Through the Cooperative State Research, Education, and Extension Service (CSREES), USDA has provided an additional $19.7 million since 1993 to state universities for MeBr replacement research and education. These federally supported research activities are in addition to extensive private sector efforts.

Making additional alternatives available to growers goes right to the heart of EPA's responsibility to help identify, register, and implement safe and effective alternatives. Understanding the importance of this in the phase-out of MeBr, EPA has made the registration of alternatives to MeBr its highest registration priority. Furthermore, EPA scientists routinely meet with prospective MeBr alternative applicants, counseling them through the pre-registration process to increase the probability that data are collected and submitted correctly the first time, thus minimizing delays.

Our efforts have paid off in several areas. Since 1997, EPA has registered a number of chemical/use combinations as part of its commitment to expedite the review of MeBr alternatives. While there is no silver bullet among them, they are nonetheless an important part of our overall strategy to replace MeBr. They include:

- 2000: Phosphine to control insects in stored commodities
- 2001: Indian Meal Moth Granulosis Virus to control Indian meal moth in stored grains
- 2001: Terrazole to control pathogens in tobacco float beds

- 2001: Telone applied through drip irrigation (all crops)
- 2002: Halosulfuron-methyl to control weeds in melons and tomatoes
- 2003: Trifloxysulfuron sodium as an herbicide for tomato transplants in Florida and Georgia
- 2004: Fosthiazate as a pre-plant nematocide for tomatoes
- 2004: Sulfuryl fluoride as a post-harvest fumigant for facilities-
- 2005: Sulfuryl fluoride expanded label to include stored commodities
- 2005: Muscodor albus as a biofumigant for pathogenic soil fungi, bacteria, and nematodes.

In addition, EPA is currently reviewing several applications for registration as MeBr alternatives. One of these, methyl iodide (iodomethane), is considered by industry and the research community to be a potential broad spectrum replacement for pre-plant uses of MeBr. Other registrations under review include sodium azide for pre-plant applications to ornamentals and turf, and furfural for pre-plant applications in greenhouse situations, ornamentals, and turf. As required by Federal pesticide laws, including the Food Quality Protection Act, EPA is currently conducting tolerance reassessment and reregistration of MeBr to ensure that its registered uses meet today's health and safety standards. To facilitate this review, EPA expects to release the revised risk assessment for MeBr and other soil fumigants in late spring of 2006 for public review and comment. Because soil fumigants are used in similar ways and present potential risks from similar paths of exposure, it makes sense to review the fumigants together rather than on separate time schedules. This process will assure a balanced, comprehensive and transparent evaluation of the risks and benefits of all fumigation options.

Thus, the CUE process is serving U.S. interests by encouraging the wider development and deployment of additional choices – some with limited application, others with potentially wider applicability – for growers to select from in meeting their needs. By allowing the U.S. an important ‘safety valve’ through which to balance growers’ needs with the environmental and public health goals of the Montreal Protocol, the CUE process has also made it possible for the U.S. to maintain our strong commitments under the treaty.

In addition, in keeping with the effort to fully meet our obligations under the treaty, users of MeBr have made and are continuing to make progress in reducing the use of MeBr. At the same time, innovative U.S. technologies and practices allow our growers to maximize the effectiveness of MeBr in controlling pests. The reductions in U.S. consumption over the past few years have been successfully accomplished in part because growers have found they can still control pests effectively by diluting MeBr with other pest-control compounds, like chloropicrin, using barrier films, and reducing their application rates of MeBr.

VI. CONCLUSION

Mr. Chairman, the U.S. positions in recent Meetings of the Parties have demonstrated the Administration's strong continued support for the Montreal Protocol as well as our commitment to phase-out MeBr as technically and economically feasible alternatives become available for U.S. growers and other users of MeBr. The Administration believes that the CUE process is working – that it balances the need to protect public health with the need to ensure the critical needs of American farmers are met.

Altogether, we believe it is vital to work with Congress and the community affected by the MeBr phase out to ensure that our implementation of the Protocol and the CUE process continues to be successful. I thank you for this opportunity to testify before this Subcommittee on behalf of the Department of State, the Department of Agriculture, and the Environmental Protection Agency. My colleagues and I would be pleased to answer any questions you may have.